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No. 950

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1960

LOCAL UNION 984,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, Etc. et al,
Petitioners

vs

THE HUMKO COMPANY INC.
(A Division of National Dairy
Products Corporation), RALPH
KENT PHILLIPY et al, and
KUHNE-SIMMONS COMPANY INC.,
Respondents

BRIEF OF RESPONDENT THE HUMKO COMPANY INC. OPPOSING PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS, SIXTH CIRCUIT

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TABLE OF CONTENTS

	Page
Opinion Court of Appeals, Sixth Circuit	1
Jurisdiction	1
Counter-Statement of Questions Presented	3
Statement of the Case	4
Argument	14
I. Did Teamsters' Unions Post Pickets at Construction Job in Champaign to Induce Work Stoppage, etc.?	14
A - Section 301 (a) of the Act Prohibits Unions Picketing at Champaign	14
B - Section 303 (a)(2) of the Act Does Not Permit Union Picketing in Champaign	20
II. Did International Teamsters' Union Participate or Ratify Pickets at Champaign to Induce Work Stoppage?	22
III. Are District Courts Findings as to HumKo Damages Clearly Erroneous?	27
IV. Teamsters' Unions Brief	33
A - Claimed Conflict in Opinions	33
B - Free Speech	36
C - The Picketing Issue	36
D - Damage Issue	37
Certificate of Service	38
Conclusion	37

CASES CITED

Page

Bieglow v. RKO Radio Pictures, 327 U. S., 251 29
Carpenters Union v. Cisco Construction Co. CA-9, 1959 A.L.C. 585 20
I.B.E.W. v. NLRB, 341 U. S. 694 ..... 16, 18, 36
International Brotherhood of Electrical Workers v. NLRB, 341 U. S. 694 ..... 16, 18
International Longshoremens Union and International Local 8 v. Hawaiian Pineapple Co., (CA-9) 226 F. 2d. 875 ..... 27, 32
International Longshoremens Union and International Local 16 et al v. Juneau Corp., (CA-9) 189 F. 2d 177, Aff. 342 U. S. 237 ..... 26, 37
Local 618 Automotive, etc. Union v. NLRB, 249 F. 2d, 332 (CA-8) 34
Local 1976 United Brotherhood, etc. v. NLRB, (1958) 357 U. S. 93 21
NLRB v. Denver Bldg. & Construction Trade Council, 341 U. S. 675 ..... 17, 35
NLRB v. General Drivers (Otis-Massey Case), 225 F. 2d. 205, CA-5 33
NLRB v. Truck Drivers, etc., 228 F. 2d. 791, CA-5 33
Seafarers Union v. NLRB (Salt Dome Case), 265 F. 2d. 58, CA-DC 34
Story Parchment Co. v. Paterson, (1930), 282 U. S. 555 29
United Brick & Clay Workers v. Deena Artware, 198 F. 2d. 637 CA-6 ..... 19, 21, 28, 36, 37
United Brotherhood of Carpenters v. United States, 330 U. S. 395, 409 24
United Electrical Workers v. Oliver, 205 F. 2d. 276, 387 (8th Circ. 1953) 31
United Mine Workers v. Patton, 211 F. 2d. 742, 746 CA-4 1954 ..... 25, 30

OTHER AUTHORITIES

Labor-Management Relations Act:
Section 8 (b)(4)(a); 29 USC, Section 158 (b)(4)(a)— Section 301; 29 USC, Section 185 22
Section 303; 29 USC, Section 187 ..... 14, 20, 28, 37
Legislative History, Taft-Hartley Law 26

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OPINION COURT OF APPEALS SIXTH CIRCUIT

This opinion is correctly cited at 287 F. 2d 231; 42 Labor Cases ¶ 16780; and 47 L. R. R. M. 2651.

The District Courts unpublished findings and conclusions (R. joint appendix, p. 683a) is attached to Petition herein at pages A40-A59.

JURISDICTION

The judgments of the Court of Appeals in case of The HumKo Company, Inc. appears in the Appendix B to the Petition for Certiorari, p. A36; and the petition to rehear was denied March 31, 1961—Appendix C, p. A39.

This petition for certiorari should be denied, for there are no special and important reasons therefor, and the District Court and the Court of Appeals Sixth Circuit have concurred in findings of facts on uncontradicted evidence that the petitioners (defendants) transported pickets four hundred miles from Memphis, Tennessee and induced and encouraged (successfully, too) employees of Kuhne-Simmons Company, Inc., and of Ralph Kent Phillippy, et al, to engage in a strike or a concerted refusal to perform any services for their respective employer, and an object (hay, the sole object) of this inducement and encouragement was to force or require contractors Kuhne-Simmons Company, Inc., Ralph Kent Phillippy, et al, and other employers to cease doing business (to-wit: construction) with and on the HumKo plant then under construction and in charge of the contractors. (Court of Appeals Opinion, Petition for Certiorari, Appendix pp. A16-A18).

The decision of the Court of Appeals Sixth Circuit is not in conflict with the decision of another Court of Appeals on this matter; and that Court expressly stated after analyzing all citations of Appellants, Petitioners here, "We can only say that we take no issue with appellants' citations, and would readily apply them if we had under consideration a factual situation which fitted into the mold of the citations". (Opinions of Court of Appeals, Petition for Certiorari, Appendix pp. A20-A-21).

The decision of the Court of Appeals (and the trial Court followed applicable decisions of this Court.

The statute involved is 29 U.S.C., sec. 187 (a). Sec. 301 (a) Tatt-Hartley Act, not iincluding amendment September 14, 1959, and is attached to Petition, Appendix pp. A31-A33.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1.

Did the appellants, International Teamsters Union, and International Teamsters Local 984, which were on strike against HumKo at its manufacturing plant at 1702 Thomas Street, in Memphis, Tennessee, its normal place of business, transport pickets to Champaign, Illinois, and there post pickets at a construction job, to induce the employees of independent contractor employers constructing that plant to engage in a concerted work stoppage with an object of the picketing to force or require these contractor employers to cease performing their contracts with each other or with HumKo?

The District Court and the Court of Appeals Sixth Circuit, concurred in findings of facts and answered: YES.

2.

Did International Teamsters Union expressly or impliedly, or is it estopped to deny that it did, authorize, ratify, participate in or render guidance to its Local 984 in the strike and use of picketing at Champaign, Illinois to induce the employees of independent contractors constructing a plant for HumKo at Champaign, to engage in a concerted work-stoppage, where an object of the picketing was to force these contractor employers to cease performing their contracts with each other or with Humko so as to make it liable to Humko for damages?

The District Court and the Court of Appeals Sixth Circuit concurred in findings of facts and answered: YES.

3.

Are Humko proved damages clearly erroneous on the evidence?

The Court of Appeals concurred with the District Court and affirmed, except it disallowed an award of attorneys fees to plaintiffs and directed the District Court to give consideration if there was one item which was duplicated.

STATEMENT OF THE CASE

HumKo does not accept the Statement of the Case by Petitioners nor the argument interspersed in the Statement.

Separate suits were brought in the United States District Court at Memphis, Tennessee, by The HumKo Co., Inc. (hereafter called HumKo), by Ralph Kent Phillipy, et al, Trustees, and by Kuhne-Simmons Company, Inc., against International Teamsters Local 984 of Memphis, Tennessee and International Teamsters Union, and certain agents and representatives of each, alleging violations of Section 303(a) of the Taft-Hartley Act, 29 U.S.C.A. Section 187 (a), prohibiting secondary boycotts, for the recovery of damages sustained and the costs of the suit.

Before trial these three cases were consolidated by the Court for the purposes of trial, and were tried before the District Court without a jury, and involve the same subject matter, except as regards damages claimed by each plaintiff. Judgment for each plaintiff was rendered.

In the language of The Trial Court: "It seems to me the question is whether or not there was a secondary boycott." (R. 244). "And that is what we are trying here, gentlemen. We are not concerned with the details of what brought on a labor dispute." (R. 245).

HumKo has a manufacturing plant at 1702 Thomas Street, Memphis, where it is engaged in its normal business of manufacturing and selling edible fats and oils (R. 223).

International Teamsters Local 984 was certified as the bargaining agent for the hourly paid maintenance and production employees and truck drivers specifically for the HumKo plant at 1702 Thomas Street in Memphis on May 1, 1957, where HumKo was engaged in its normal manufacturing activities (R. 207, 223, Stip. 295).

Contract negotiations began in June 1957 between HumKo and officials of International Teamsters Local Union 984 and an International Representative and General Organizer of International Teamsters Union (R. 207, 208, 289, 292). The Teamsters Union went on strike against the HumKo manufacturing plant on Thomas Street in Memphis July 8, 1957 (R. 207).

After International Teamsters Local 984 began its strike at the HumKo manufacturing plant on Thomas Street in Memphis, as the duly certified bargaining agent for the production employees of that HumKo plant, this International Teamsters Local petitioned the National Labor Board for an election covering employees at the Chemical Division of HumKo on Pope Street in Memphis, which was held, and the Teamsters lost that election (R. 223, 296, 297).

Later, and while International Teamsters Local 984 was still on strike against HumKo manufacturing plant on Thomas Street in Memphis, HumKo did commence production at Champaign and another International Teamster Local 26 in Champaign filed a petition to represent HumKo production employees working at the HumKo plant in Champaign and an election was held and won by this International Teamster Local 26 (R. 199, 223). Negotiations were had between HumKo and this International Teamsters Local 26 for the Champaign HumKo plant entirely independent of International Teamsters Local 984

on strike against HumKo at its plant on Thomas Street in Memphis (R. 223, 297). International Teamsters Local 984 of Memphis never made any demand on HumKo at any time to represent any employees of HumKo at Champaign (R. 297).

Soon after International Teamsters Local 984 went on strike against the HumKo plant on Thomas Street in Memphis on July 8, 1957, this International Teamsters Local 984 transported or sent persons from Memphis to Champaign to picket a construction job where independent contractors and their employees were constructing a new plant for HumKo (R. 147-147, 166-172). The construction on this plant at Champaign was only about 65 to 70% completed (R. 69, 70, 298). The HumKo plant at Champaign was in possession of the contractors (R. 320), was not in production and, in fact, was not capable of production (R. 69, 105, 192, 206, 294). HumKo had no production employees in Champaign, Illinois on this construction at that time (R. 192, 298). No testimony was offered contrary to these facts.

This picket line was established by International Teamsters Local 984 at the construction job at Champaign so that the neutral employee construction workers on this job would not continue work (R. 167), and this was made clear to the pickets who patrolled the construction job in Champaign and to the HumKo employees at the Thomas Street manufacturing plant in Memphis who were on strike (R. 124, 127, 143, 167). Also, an official of International Teamsters Local 984 stated that it was not necessary to keep up the picket line all the time at Champaign for there were no construction workers around the clock (R. 172), and no contractors worked on Saturday (R. 174). This picket line was established even though other Unions

in Champaign would make no promise to cooperate (R. 147-149). The men who walked the picket line at the construction job in Champaign were told by officers of International Teamsters Local 984 that the object of the picket line was to stop the construction at Champaign (R. 146, 147, 168, 169, 170, 177). The Teamsters Union official who was in control of the picket line in Champaign stated to his pickets he "was happy that all construction work was stopped and we had accomplished what we had come for." (R. 151, 170). No testimony was offered contrary to these facts.

This same statement of the object and purpose of the Champaign picketing was made in Memphis to HumKo employees by officials of International Teamsters Local 984 (R. 135, 137). Various officials of International Teamsters Local 984 stated the object of the picket line at Champaign was to reach the contractors who were constructing the plant under contract and make them cease doing business with HumKo on this job; (R. 124, 131, 135, 142, 159, 171); and these statements were made while the pickets were patrolling in Champaign (R. 171), and in the Union hall in Memphis after the pickets were withdrawn from Champaign (R. 124, 131, 133). No testimony was offered contrary to these facts.

There were some HumKo office employees and engineers at this construction job (but no construction workers and no production employees), who crossed the line, and the official of International Teamsters Local 984 in charge of the picket line in Champaign told the pickets "Just let them alone" or "Let them go in because we are not interested in them." (R 171, 174, 175, 179). No HumKo employees performed any construction work (R. 320). An official of International Teamsters Local 984 also stated in

Memphis that the Union pickets were against construction and not against any HumKo employees in Champaign (R. 124, 137, 143), and the Union was interested only in stopping the construction work (R. 143); and a picket who walked the picket line in Champaign stated "We were all aware of the fact that there wasn't any employees up there except contractors and management" (R. 152). No testimony was offered contrary to these facts.

International Teamsters Local 984 deliberately did all of these acts despite its counsel's warning "under no condition was this picketing (to be) directed at any one but HumKo Company. I have been in enough secondary boycotts to know what a secondary boycott"—(interrupted) (R. 427). By the undisputed and uncontradicted testimony of neutral construction workers helping to erect the plant at Champaign the neutral employees of the contractors on this construction job were effectively induced to engage in a concerted work stoppage or to refuse to perform any services on this job by the pickets placed there by International Teamsters Local 984 for that purpose (R. Painters 61-78, Roofers 81-90, Carpenters 94-97, Bricklayers 103-107). It is undisputed all employees of all the contractors, estimated at 75-100, refused to come to work on their jobs as long as the pickets were established (R. 191).

There was no labor dispute between any Unions and the contractors erecting the plant at Champaign at the time International Teamsters Local 984 sent men from Memphis to Champaign to establish a picket line to shut down all construction work (R. 60, 85, 104, 317). It is not disputed that International Teamsters Local 984 directed and participated in all phases of picketing including the strike against HumKo at the primary site on Thomas Street in

Memphis, where it was certified specifically as the bargaining agent for production employees, and at the secondary construction site in Champaign where it never sought to be the bargaining agent, and was never certified as such.

The International Teamsters Union expressly or impliedly authorized or ratified, acquiesced in and rendered guidance and participated in these unlawful acts and is estopped to deny the same as shown by these facts:

Francis Murtha is an International Teamsters Union International Representative and General Organizer for ten States (R. 290, 444). Negotiations between International Teamsters Local Union 984 and HumKo began in June 1957 before the strike at Memphis (R. 290). Francis Murtha, International Representative and General Organizer, took an active part in these negotiations with officials of International Teamsters Local 984 for a Teamster Union labor contract with HumKo before the strike of the employees at HumKo plant on Thomas Street in Memphis, Tennessee (R. 207-209, 290-292). In one of these meetings, at least, Mr. Murtha was the only Teamsters Union representative present (R. 210, 293). Mr. Murtha took part in these Teamster Union contract negotiatioins with HumKo before pickets were placed at Champaign (R. 208, 290); and while the Teamster pickets were at the construction job in Champaign, and raised no objections to the pickets at (R. 211, 212, 291, 293); and after the pickets at Champaign were removed by the Teamsters Union (R. 212, 291, 293).

A National Representative of International Teamsters Union came to the construction job at Champaign where the Teamsters pickets were patrolling and told the pickets "to keep on that gate and keep walking" (R. 116), and they did for 12 days. The guard on the gate heard him

talking to a picket and he told the picket who he was (R. 117-118), and the guard saw him two or three times during the picketing at Champaign (R. 122). There was no explanation or denial offered by International Teamsters Union or International Teamsters Local 984 of these facts.

The President of International Teamsters Local 984 stated at a Union meeting in Memphis while the pickets were at Champaign, the Local had 100% backing by International Union (R. 138-9). Mr. Murtha stated that as General Organizer for International Teamsters Union he assisted in negotiations with HumKo as part of his usual duties (R. 448-9); he said International Teamsters Union is composed of various Locals of which International Teamsters Local 984 is one (R. 454-5); he said he had use of a desk and telephone at the hall of International Teamsters Local 984 (R. 450); he said he discussed the HumKo matter with officials of International Teamsters Local 984 (R. 451); he said he discussed the Champaign matter with International Teamsters Local 984 "long prior to any strike" (R. 453); he said his duties included arranging contracts for the benefit of the Teamsters Union (R. 454), conducting elections and trusteeships (R. 456); he said the International Teamsters Union gets forty cents per member per month and there are about two thousand members of International Teamsters Local 984 (R. 455); he said he drew his full pay and salary all through these HumKo negotiations from International Teamsters (R. 458); he said that as International Teamsters Agent he took a call in the office of International Teamsters Local Union 984 from the National Labor Relations Board about the Champaign picketing (R. 361).

The damages sustained by HumKo because of the secondary boycott activities of International Teamsters Union and International Teamsters Local 984 are itemized in an Exhibit in the record of evidence (R. 563).

There was great delay in construction caused by the secondary boycott pickets at Champaign. Neutral contractors lost men from the jobs. The painting contractor could not get painters (R. 70); the brick laying contractor lost at least two men who got other jobs (R. 170). The carpentering contractor had at least three men take jobs elsewhere (R. 97-99); Mr. Kuhns, the Secretary-Treasurer of International Teamsters Local 984 said he wanted to delay completion of construction (R. 136), and gave his opinion that after the secondary boycott it would be some time to start up construction (R. 136, 138). Mr. Farrell, President of International Teamsters Local 984, gave his opinion the contractors' employees "had scattered all over the country to go to work elsewhere," and it would take three months to get in construction again (R. 152). Mr. Farrell also said the contractors would have to go out and hire new employees and start all over again" (R. 159). Mr. Kirby, Senior Vice President of HumKo, stated from on-the-spot observation, the construction was delayed by secondary boycott picketing (R. 299), and two weeks after the pickets were withdrawn he was in Champaign and by simple observation there were not as many people working, the work was not progressing as fast, and he drove the contractors to get more men on the jobs (R. 308); and "the knowledge certainly is obvious the construction was delayed" (R. 299). After discussion the HumKo officials concluded the completion of the construction at Champaign was delayed at least one month (R. 214). It is not disputed the construction was completely shut down from July 12-

July 23 inclusive, a period of twelve days, and Mr. Wood, General Manager of the Champaign plant, states there were only moderate size crews for two or three weeks after the picketing" (R. 194).

The damage items claimed by HumKo because of the secondary boycott (R. 563) are sustained by the proof:

1. The earnings of the HumKo office and engineering employees at Champaign ($4,139.12), and the trainee employees in Memphis ($10,214.16) were accrued stand-by charges for 30 days delay in the construction caused by the unlawful picketing (R. 217). These damages are explained (R. 213 and 215, 260 et seq), and are itemized in detail (R. 563-565). See also Court's finding (R. 695).

These people were being trained for work at Champaign, Illinois, and when the secondary boycott delayed completion of the plant HumKo had to bear these expenses.

2. The direct expenses paid by HumKo to keep the trainees from Champaign in Memphis for an additional 30 days because of the construction delay was $3,879.45, and is itemized (R. 565). These expenses were caused by the delay due to secondary boycott.

3. The extra guard service was incurred during the secondary boycott picketing and additional guard services were caused by construction delay (R. 218), and is broken down (R. 565) to show this total item of damages at $2,394.24. Court's finding (R. 695).

4. HumKo was charged and paid for engineering services during this month's delay in construction in the amount of $6,078.50, which is an average for the 30 days delay in July and August 1957 (R. 219). See also Court's finding (R. 695).

5. The actual railroad fare of a trip of A. H. Wood to Memphis because of problems created by the secondary boycott was fixed at $55.99 (R. 565).

6. HumKo employed legal services of Attorneys directly connected with and for work involved as a result of the unlawful pi keting at Champaign, Illinois, fees for which were discussed and agreed at $1,000.00 (R. 220), and the Court found this charge fair and reasonable and approved (R. 695).

7. The item of taxes and insurance of $1,230.00 were paid by HumKo during this 30 days delay in construction and is explained (R. 220), and is broken down (R. 565), and HumKo had to pay on idle plant and property (Court's finding (R. 696).

8. The interest on investment is proved at 4½% on its idle capital for 30 days, and totals $23,021.59 (R. 22[illegible]). It is the going rate HumKo paid for money it borrowed (R. 276).

9. Legal fees were incurred by HumKo to protect its interest in this suit and agreed upon at $5,000.00 (R. 221), and were found reasonable and proved by the trial Court (R. 696). The Court of Appeals disallowed this item.

ARGUMENT

I.

DID THE INTERNATIONAL TEAMSTERS UNIONS POST PICKETS AT A CONSTRUCTION JOB IN CHAMPAIGN, ILLINOIS, TO INDUCE EMPLOYEES OF INDEPENDENT CONTRACTORS THERE TO ENGAGE IN A CONCERTED WORK STOPPAGE TO FORCE THE CONTRACTORS TO CEASE DOING BUSINESS WITH EACH OTHER AND WITH HUMKO?

A. Section 303 (a), of the Act Prohibits Unions Picketing at Champaign.

The language of Section 303(a), 29 U.S.C.A., Section 187(a), insofar as applicable here, reads:

> "It shall be unlawful, for the purpose of this Section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, article, materials, or commodities, or to perform any services, where an object there is . . .
> "(1)forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor or manufacturer, or to cease doing business with any other person; . . ."

The facts establishing the object and purpose of the picketing line at the construction job are fully developed in the Statement of Facts and will not be repeated in detail here. They show to a demonstration the object was

to shut down the construction—to reach the neutral employees of contractors, and not any HumKo employees.

It is not disputed nor denied that Mr. Kuhns, Secretary-Treasurer of International Teamsters Local 984, took pickets to Champaign and directed the activities of these pickets there, and told them the Union wanted to stop the construction work and keep the contractors from completing the plant, and the Union was not interested in any HumKo salaried office and management employees, but only in stopping construction workers and the contractors, and "the main reason they went to Champaign was to stop the construction of the plant."

The background of this HumKo matter is a labor dispute between International Teamsters Local 984 and HumKo to organize the production and maintenance employees and truck drivers of HumKo at its manufacturing plant at 1702 Thomas Street, Memphis, Tennessee. The International Teamsters Union and International Teamsters Local 984 contend they engaged in a primary dispute with HumKo at Champaign and directed picketing at Champaign against HumKo alone, but this assertion is rendered ridiculous by the instructions of the officials of the International Local 984 in Champaign to the pickets not to bother about picketing when only HumKo's salaried and management employees or office workers were going on the construction job, and to "Just let them alone" or "Let them go on, because we are not interested in them" (R. 171-174). These instructions were never disputed, denied or repudiated in any testimony in this case. The only way that the Union defendants could attain their purpose and object to stop construction was to induce or force employees of contractors off the job, and force or require the subcontractors to cease doing business with

the General Contractor, and the General Contractors and other direct contractors from doing business with HumKo.

The Teamsters contend for the right to picket at Champaign as a right of free speech. This same contention has been made with reference to the language of Section 8 (b) (4) (A) of the National Labor Relations Act, as amended which contains the same proscription against secondary boycotts as an unfair labor practice as contained in Section 303 (a) permitting the recovery of damages; and in *I.B.E.W. vs. N.L.R.B.*, 341 U.S. 694, the Supreme Court answered this contention:

> "The question here is what effect, if any, shall be given to Section 8(c) in its application to peaceful picketing conducted by a labor organization or its agents merely as an inducement to or encouragement of employees to engage in a secondary boycott. Petitioners contend that Section 8(c) immunizes peaceful picketiing, even though the picketing induces a secondary boycott made unlawful by Section 8(b) (4). The Board reached the opposite conclusion and the Court below approved the Board's order as applied to the facts of this case which it recognized as amounting to 'bare instigation' of the secondary boycott. We agree with the Board.
>
> "a. To exempt peaceful picketing from the condemnation of Section 8(b)(4)(A) as a means of bringing about a secondary boycott is contrary to the language and purpose of that Section. The words 'induce and encourage' are broad enough to include in them every form of influence and persuasion . . .
>
> " 'Induce or encourage' appear in like context in Section 303. The action proscribed by the terms of Section 8(b)(4) is made in Section 303 the basis for the recovery of damages in a civil action. Because Section 8(c) is in terms limited to unfair labor practice proceedings and Section 303 refers only to civil

actions for damages, it seems clear that Section 8(c) does not apply to an action under Section 303. That does not mention unfair labor practices through which alone the provisions of Section 8(c) can become applicable. If Section 8(c) were given the effect which petitioners urge, it would limit Section 8(b)(4)(A) so as to give the words 'induce or encourage' a meaning in that section different than they have in Section 303. We think that the words are entitled to the same meaning in subsection 8(b)(4) and 303 . . ."

Kuhne Simmons Company as General Contractor and the painters, the roofers, the brick layers et al were subcontractors doing business with HumKo, and the General Contractor and the subcontractor were doing business with each other. They have been damaged by the unlawful acts of the International Teamsters and its Local Union 984, and may recover. *N.L.R.B. v. Denver Bldg & Construction Trade Council*, 341 U.S. 675.

International Teamsters and International Local 984 Unions by their declared purpose and objective committed themselves to unlawfully extending their dispute with HumKo at its manufacturing plant in Memphis, where HumKo was engaged in its normal business, to a construction job in Champaign, some 400 miles away, where a plant was under construction and not in production. There were no HumKo production workers to reach and the declared purpose and immediate objective of the Union was to induce and encourage employees of the contractors on the job to refuse in the course of their employment to perform services, and an object thereof was to force or require the neutral contractors and subcontractors to cease doing business with each other or with HumKo.

Congress enacted a blanket prohibition which applies here against all strike pressures directed against employ-

ers other than HumKo, the employer immediately involved in the Teamsters dispute.

The object of the Teamsters here was a secondary boycott. However, it is settled that it is sufficient to show a secondary boycott if an objective of the picketing, although not necessarily the only objective of the picketing, was to induce employees of the contractors to engage in a work stoppage in the course of their employment, and to force the contractor employers from doing business with any other person. In *I.B.E.W. vs. N.L.R.B.*, 341 U.S. 694, the Court's language is in point:

> "There are no findings that the picketing was aimed at Langer to force him to employ union workmen on this job. On the contrary, the findings demonstrate that the picketing was directed at Deltorto's employees to induce them to strike and thus force Deltorto, the contractor, to terminate Langer's electrical subcontract.
>
> "The Denver case also covers the point that it was sufficient that an objective of the picketing, although not necessarily the only objective of the picketinig was to force Giorgi to terminate Langer's uncompleted contract and thus cease doing business with him on the project." id. pp. 699-70.

The International Teamsters Unions argue that to the extent picketing has as its object, and in fact induces employees of the struck employer to quit work and join their fellow workmen in concerted activity against their common employer it is protected. With this argument we agree, but the converse is also true that picketing here involved had as its object to induce and in fact did induce employees of a neutral employer to quit work with the object to force this neutral employer to cease doing business with any other person and it is not protected, and it is unlawful.

Such action renders the Unions so picketing liable to "whoever shall be injured in his business or property" and such person "shall recover the damages by him sustained and the cost of the suit." There is nothing in the language or legislative history of the Taft-Hartley law which indicates Congress intended to create any asylum of immunity from the proscription of secondary boycott picketing where the picketing was intended and directed at and against the secondary employers.

The Teamsters rely on a number of cases to support their contention that the Teamsters Union could go to Champaign to picket the plant under construction in support of their dispute with HumKo in Memphis, concerning its production and maintenance employees at its manufacturing plant on Thomas Street. The Teamsters stretch their contention thin by urging HumKo recognized the Teamsters Unions right to picket at Champaign in that the Union placed pickets at the HumKo Chemical plant on Pope Street in Memphis, but this is a distortion of the facts, for the record is undisputed the Teamsters Unions only picketed at this Chemical plant two or three days (R. 307) and filed a Labor Board Petition for representation and election at that plant, and lost the election held there (R. 223, 296-297) and thereafter there was no picketing.

We believe the language of the Court of Appeals, Sixth Circuit, in *United Brick & Clay Workers v. Deena Artware*, 198 F. dr 637, Cert. den. 344 U.S. 897, rehear. den. 344 U.S., 919, answers this contention:

> "It is well established by now that the right to strike under the National Labor Relations Act, Section 163, Title 29, U.S.C.A., includes peaceful picketing by the striking employees of the employer's place

of business, regardless of the damage to the employer's business resulting therefrom... *N.L.R.B. v. Rice Milling Co.*, 341 U.S., 655, 671, 71 S. Ct. 961, 95 L. Ed. 1284; *N.L.R.B. v. Service Trade Chauffeurs*, 2 Cir. 191 F. 2d. 65, 67. Such activity is generally referred to as 'primary' picketing. But the extension of such picketing for the purpose of exerting pressure on a neutral employer, generally referred to as "secondary' picketing or boycott, was, under certain conditions, made unlawful by Section 303(a) of the Labor Management Relations Act of 1947 . . .

"Appellants rely upo a number of decisions as holding that where picketing is confined to the immediate vicinity of the employer's premises it constitutes permissive primary action. *Oil Workers International Union*, 84 *N.L.R.B.* 315; *Ryan Construction Co.*, 85 *N.L.R.B.* 417; *Moore Dry Dock Co.*, 92 *N.L.R.B.* No. 93; *N.L.R.B. v. Service Trade Chauffeurs*, supra. while this is one element to be considered in determining whether picketing is primary or secondary, it is not controlling. In *N.L.R.B. v. Denver Building and Construction Trades Council*, supra, and *International Brotherhood of Electrical Workers v. N.L.R.B.*, supra, the Supreme Court held the picketing unlawful even though it was confined to the immediate premises of the employer." id. pp. 642 and 643. See also *Carpenters Union v. Cisco Construction Co.*, CA-9, 1959, cert. den. 59 A.L.C. 585.

B. Section 303 (a) (2) of the Act Does Not Permit Unions Picketing in Champaign.

Teamsters argue that the proviso of Section 303 (a) (2) of the Taft-Hartley Law, Section 187 (a)(2), 29 U.S.C.A., makes an exception to 303 (a)(1), Section 187 (a)(1), 29 U.S.C.A., and permits the picketing in Champaign. Yet the Teamsters Unions do state in their brief this contention has been rejected: "We understand, of course, that a somewhat similar claim was rejected by this Court in

United Brick & Clay Workers v. Deena Artware, 198 F. 2d 637, at p. 644," cert. den. 344 U.S. 897, re-hearing den. 344 U.S. 919. We submit this decision is conclusive:

> "In enacting Section 303(a) Congress subdivided it into four separate paragraphs, each apparently pertaining to a separate field of labor activity. There is no express provision making any one paragraph a modification or limitation of the provisions of another. In two of the paragraphs, 303(a)(2) and (a)(4) Congress expressly excluded certain activities from their general scope by the use of the word 'unless'. There is no such exception included in the wording of paragraph (a)(1). Implied exceptions to the express provisions of a statute are not favored. (Cases cited.) We are of the opinion that Section 303(a)(2) pertains to a specific, restricted field of labor activity, not necessarily included in the provisions of Section 303 (a)(1), but in any event withdrawn from its coverage for the purpose of being treated as a separate and independent field of labor activity, and that it is not to be treated as nullifying the effect of other activities of labor organizations proscribed by Section 303(a)(1)."

Petitioners urge the opinion of the Supreme Court in Local 1976 *United Brotherhood*, etc. *v. N.L.R.B.* (1958), 357 U.S. 93, is an "intervening opinion" and the *Deena Artware* case should not be followed. The Local 1976 case involved a so-called "hot cargo" clause in an agreement. This Court held that a Union which induces employees to engage in a secondary boycott when the employer has agreed, at the time of the secondary boycott, to comply with the "hot cargo" clause, is not guilty of an unfair labor practice, saying:

> "A boycott voluntarily engaged in by a secondary employer for his own business reasons, perhaps because the unionization of other employers will protect

his competitive position or because he identifies his own interests with those of his employees and their union, is not covered by the statute . . .

'It is aimed to restrict the area of industrial conflict insofar as this could be achieved by prohibiting the most obvious, wide spread, and, as Congress evidently judged, dangerous practice of unions to widen that conflict; the coercion of neutral employers, themselves, not concerned with a primary labor dispute, through the inducement of their employees to engage in strikes or concerted refusal to handle goods." id. p. 98 et seq. See also *Carpenters Union v. Cisco*, CA-9, 266 F. 2d 365, cert. den. 59 A.L.C. 585.

II.

DID INTERNATIONAL TEAMSTERS UNION PARTICIPATE IN, RATIFY OR RENDER GUIDANCE TO ITS LOCAL 984 IN STRIKE AT MEMPHIS AND USE OF PICKETS AT CHAMPAIGN TO INDUCE A WORK STOPPAGE OF EMPLOYEES OF CONTRACTORS TO FORCE THE CONTRACTORS TO CEASE DOING BUSINESS WITH HUMKO?

The Taft-Hartley Law, Section 301-303 (29 U.S.C.A. Sections 185-187), grants the right of suit against Labor Organizations for secondary boycotts. Section 301 (29 U.S.C.A. Section 185) provides:

"For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

In this case HumKo asserts liability against the International Teamsters Union and International Teamsters Local 984 for damages. The evidence in this case (cited

in detail in the statement of facts) shows that International Teamsters Union through Mr. Murtha, its International Representative and Organizer for ten Southern States, in the course of his usual duties, actively participated in negotiations for a Teamsters Union contract with HumKo and International Teamsters Local 984 as the bargaining agent for production and maintenance employees and truck drivers employed at the MumKo manufacturing plant, 1702 Thomas Street, Memphis, Tennessee before a strike was called at this plant; after a strike was called by the Teamsters Union against this Humko plant; during the time striking Teamster pickets from Memphis were placed at the construction job in Champaign, Illinois for the openly avowed purpose to induce employees of contractors erecting the plant in Champaign to engage in a concerted work stoppage with an object to force or require the contractor employers to cease doing business with HumKo; and after the pickets were removed from Champaign construction job by the Teamsters Union.

Without objection by the Teamsters, it was proved (R. 115-116, 118) that another National representative of the International Teamsters Union, a Mr. Mesner or Mesgner, appeared at the Teamsters picket line in Champaign "and told the fellows to keep on that gate and keep walking," and then on cross-examination of this witness the International Teamsters Union secured the information that this representative of the International Teamsters Union stated: "He said he was from the International Union and he wanted them (the pickets) to stay on that gate" (R. 118), and this witness, who was a guard at the gate to the premises where the plant was being constructed, "saw him two or three times during the strike" (R. 122).

No opportunity was denied the International Team-

sters Union to explain away this activity of a second International Representative. Mr. Murtha, an International Representative and Organizer, who was negotiating and advising in Memphis, was offered in evidence by the Teamsters Unions and he offered no denial that International Agent Mesner, or Mesgner was fully authorized to act as he did. This agent of International Teamsters Union was within control of International Teamsters Unions and they chose to remain quiet, and it must be presumed any testimony on this point would have been adverse to them.

Detailed references to the Record are made in the Statement of Facts. The Court of Appeals findings on this point are also in detail. See Opinion, Petitiioners Brief, p. A. 23-26.

In *United Brotherhood of Carpenters vs. United States* 330 U.S. 395, 409, there was a criminal proceeding under the Sherman Act. In passing on the responsibility of the Union the Court said:

> "Certainly an association or organization cannot escape responsibility by standing orders disavowing authority on the part of its officers to make any agreements in violation of the Sherman Act and disclaiming Union responsibility for such agreements. Facile arrangements do not create immunity from the Act, whether they are made by employee or by employer groups. The conditions of liability under Section 6 are the same in the case of each. The grant of authority to an officer of a Union to negotiate agreements with employers regarding hours, wages and working conditions may well be sufficient to make the union liable. An illustrative, but non-restrictive example might be where there was knowing participation by the Union in the operation of the illegal agreement after its execution. And the custom or traditional practice of a particular Union can also be a source

of actual authorization of an officer to act for and bind the Union." (Emphasis supplied)

In *United Mine Workers vs. Patton*, 211 F. 2d 742, 746, CA-4 1954, cert. den. 348 U.S. 824, the facts recited there are by analogy applicable here. Patton leased and operated a mine from Clinchfield on a non-Union basis. The defendant Unions struck against Clinchfield, and Patton, through pressure put upon it, ceased operation. The Appellate Court held that there was sufficient evidence to make a jury question; however, it reversed for errors in the charge and the allowance of punitive damages. The defendants United National Union and United Local Union, argued on appeal that there was no evidence to show that they ever authorized or ratified the strikes against Clinchfield. The language of the Appellate Court, in considering this contention, is applicable here:

"'. . . It is true that there is no evidence of any resolution of either the United Mine Workers or District 28 authorizing or ratifying the strikes. There is evidence, however, that the strikes were called by the Field Representative of the United Mine Workers, who was employed by District 28, and that he was engaged in the organization work that was being carried on by the International Union through District 28, which was a mere division of the International Union. Members of the Union are members of Local and District Unions as well as the International; and of the $4.00 monthly dues paid by them, $2.00 goes to the International Union, $1.00 to the Local Union and $1.00 to the District Organization. It is clear that in carrying on organizational work the Field Representative is engaged in the business of both the International Union and the District and that both are responsible for acts done by him within the scope and course of his employment." id. p. 746.

In his analysis of the Taft-Hartley Law, Senator Taft had the following to say, 93 Congressional Record, page 1001, Legislative History of Labor Management Relations Act, Volume 2, page 1622:

> "Section 2(2), 2(13), and 301(e): The conference agreement in defining the term employer struck out the vague phrase in the Wagner Act 'any one acting in the interest of an employer' and inserted in lieu thereof the word 'agent.' The term agent is defined in Section 2(13) and Section 301(e), since it is used throughout the Unfair Labor Practice Sections of Title I and in Sections 301 and 303 of Title III. In defining the term the Conference Amendment reads 'The question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.' This restores the Law of Agency as it has been developed at common law . . .
>
> "Similarly Union business agents or stewards, acting in their capacity of Union officers, may make their Union guilty of an unfair-labor practice in the bill even though no formal action has been taken by the Union to authorize or approve such conduct."

In International Longshoremens Union, and International Local 16 et al v. Juneau Corp. (CA-9) 189 F. 2d 177, affirmed 342 U. S. 237, the case was a suit for damages under Section 303(a) of the Act, and on appeal from a judgment against the International Union and Local 16 for $750,000.00 and $10,000.00 attorneys' fees and costs and disbursements. On the question of the International Union and the Local Union being bound by the acts of agents, the Court said:

> "Instructions 6 and 7 were based on the well established principle of tort law that where two persons act in concert to commit a wrong each is liable for the entire injury resulting therefrom, and that one

who abets a wrongful act is equally liable with the perpetrator. There was sufficient evidence before the court of such an understanding between Local 16 and International on which to submit the matter to the jury for its determination."

In International Longshoremens Union and International Local 8 v. Hawaiian Pineapple Co. (CA-9) 226 F. 2d. 875, Cert. denied 351 U. S. 963, there was a suit for damages for secondary boycott and an appeal from a judgment of $201,274.27 against the International and Local 8 for damages including attorneys fee. On the question of the International being bound by the acts of its agent, the Court said:

"By section 301 of the Taft-Hartley (see 29 U.S.C.A. 185) an employer or a union is 'bound by the acts of its agents' and 'the question of whether the specific acts were actually authorized or subsequently ratified shall not be controlling.'' Surprisingly, there is little case law yet on the agency feature of the section. Probably the practical result of the section in the case of labor unions was to restore the general rules of agency, particularly the rules of apparent authority which had been curtailed by the Wagner Act and the decision of United Brotherhood of Carpenters and Joiners v. United States, 330 U. S., 395, 47 ALC 257. We thing the section was intended to cover the acts of officers of the union who deal with employers or with the public. That is, if a union puts or lets an officer or other representative get into a position where he can and does cause trouble proscribed by the Act, then the union is responsible."

III

ARE THE DISTRICT COURT'S FINDINGS AS TO HUMKO'S DAMAGES CLEARLY ERRONEOUS ON THE EVIDENCE?

The findings of the District Court and the Court of Appeals on this point are based on facts and will not be reviewed by the Supreme Court. These facts are shown in detail under Statement of Facts based on the record; and are considered in the District Court's and the Court of Appeals Opinions. (Pet. brief, pp. A 52, A 26.)

Section 303 (b) of the Act, 187(b), 29 U.S.C.A., provides:

> "Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any District Court of the United States subject to the limitations and provisions of Section 301 hereof without respect to the amount in controversy, or in any other Court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

Whoever shall be injured in his business by secondary boycott shall recover the damages by him sustained and the cost of the suit. No point is made by Petitioners of the right of HumKo, as primary employer, to recover damages. This is settled. *United Brick & Clay Workers v. Deena Artware,* 198 F. 2d 637, cert. denied 344 U.S. 897, re-hearing denied 344 U.S. 919.

Teamsters Unions admit if the picketing is unlawful, proscribed by Section 303(b) of the Act (Section 187(b), 29 U.S.C.A.), there was some damage (International Teamsters Local 984 Brief p. 55). As restricted as the Teamsters would make HumKo's right of recovery of damages it seems the sole question is "how much."

Teamsters Unions contend the damages are speculative, and are without substantial support in the evidence. We must keep in mind that this case demands damages from International Teamsters Union and its International Local 984 for statements and acts by Union officials and repre-

sentatives for declared purposes, and intentions, and unlawful action in accordance therewith, and the accomplishment of the objects sought.

In *Story Parchment Co. v. Paterson* (1930), 282 U.S. 555, there was a suit arising under the Sherman Anti-Trust Act to recover damages. There was a recovery in the District Court. The Court of Appeals, First Circuit reversed. The Story case is quoted in the Court of Appeals opinion in this case and is in point here.

In *Bieglow v. RKO Radio Pictures,* 327 U.S., 251, there was a suit for treble damages under the Sherman Anti-Trust Act. There was a recovery in the District Court. The Court of Appeals, Seventh Circuit, reversed on the grounds the damages were not sufficiently proved and were speculative. The Supreme Court disagreed and said:

> "Hence, it is said, petitioners' evidence does not establish the fact of damage, and that further, the standard of comparison which the evidence sets up is too speculative and uncertain to afford an accurate measure of the amount of the damage.
>
> "The case in these respects is comparable to *Eastman Kodak Co. v. Southern Photo Materials Co.* 273 U.S. 359, 71 L. ed. 684, 47 S. Ct. 400, and *Story Parchment Co. v. Patterson Parchment Paper Co.* 282 U.S. 555, 75 L. ed. 544, S. Ct. 248, in which precisely the same arguments now addressed to us were rejected . . .
>
> "In such circumstances 'juries are allowed to act on probable and inferential as well as upon direct and positive proof.' *Story Parchment Paper Co.* supra (282 U.S. 561-564, 75 L. ed. 547-549, 51 S. Ct. 248); *Eastman Kodak Co. v. Southern Photo Materials Co.* supra (273 U.S. 377-379, 71 L. ed. 690, 691, 47 S. Ct. 400).

> "Any other rule would enable the wrongdoer to profit by his wrongdoing at the expense of his victim. It would be an inducement to make wrongdoing so effective and complete in every case as to preclude any recovery by rendering the measure of damages uncertain. Failure to apply it would mean that the more grievous the wrong done, the less likelihood there would be of a recovery.
>
> "The most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created." id. pp. 263, 4, 5.

The construction work would not have been stopped, the construction of the plant would not have been shut down — and the delay in completion would not have occurred, with all attendant and concurrent expenses, if the unlawful picketing had not happened. The record has evidence and the District Court and the Court of Appeals have found that the purposes and object of the picketing at Champaign was a secondary boycott. The only real question before the District and Appellate Court was: Can the Teamsters Unions profit and be absolved from liability from their own deliberate and planned wrong?

In *United Mine Workers v. Patton* (CA-4) 211 F. 2d 742, cert. den. 1954, 348, U.S. 824, future profits were allowed as damages:

> "Another argument is that no damage has been shown because it is said that the three year lease had not been delivered and future profits of the business which plaintiffs were forced to abandon were purely speculative. We think, however, that the evidence sufficiently showed that the plaintiffs had established a profitable business under the arangement they had with Clinchfield, and that irrespective of the three year lease a sufficient basis had been laid for an award of damages."

In *United Electrical Workers v. Oliver*, 205 F. 2d 376, 387 (8th Circ. 1953) the Appellate Court in discussing the question of damages for secondary boycott on a Section 303 (a) suit stated as follows:

> "Plaintiff sought to recover as damages the necessary expenditures incurred by it during the period of the strikes and for which it received no return in productive labor. These expenses were fixed overhead charges, including the expense of maintaining the plant, the salaries of supervisory and professional employees and other essential personnel necessarily retained by the Company while the strikes were in progress, property insurance, property taxes, compensation and group insurance, social security taxes, and employees pension liability:
>
> "Plaintiff's evidence to establish its standby expense may be summarized. Overhead expense is the necessary cost incurred by a Company in its operations which cannot be easily identified with any individual product and which by accepted cost accounting procedure is spread over or allocated to the productive labor, which is labor performed in the processing of the company's product. Such expenses do not fluctuate directly with plant operations. They are expenses necessary to keep the Company on a going concern basis or based upon the Company's production which is planned for a year in advance. They are constnat regardless of fluctuations and plant operations. When productive labor in a plant is reduced for any period to less than the normal, the Company sustains a loss in the expenditure of necessary overhead for which it received no production. During the periods of the strikes the productive labor in the plant was 52½% of normal. Since during the periods in question that Company received only 52½% of normal production of the plant while at the same time compelled to incur its standby overhead expenses, the jury might in all the circumstances find that its loss amounted to

47½% of the overhead, for which no return was received in the form of productive labor. This loss on plaintiff's computation was $51,379.32. In addition plaintiff offered evidence to show a loss in expense for power and light purchased but not useable because of the interruption of operation due to the strikes amounting to $5,062.06, and for expenses of $11,851.90 for storage of products and material outside the plant made necessary by reason of the strikes. A total of all losses claimed for the three strikes was $68,293.28. The jury verdicts on Counts II and III were for that part of this loss which plaintiff's evidence attribute to the strikes involved in those Counts." See also *Standard Mach. Co. v. Duncan Shaw* (CA-1) 208 F. 2d 61, 64.

In *International Longshoremens Union v. Hawaiian Pineapple* (CA-9) 226 F. 24 873, cert. den. 351 U.S. 964, suit was for damages for secondary boycott activities prohibited by Sec. 303 (a) of the Act. Damages were recovered for over $200,000.00. The plaintiff's claim for damage (attached to the opinion in appendix A) included salaries, wages and expenses of its officials and employees, expenses of legal and public relations counsel, and special police officers, and were submitted and included in the damages awarded and recovery therefor approved.

In the language of the cases the evidence offered by HumKo shows the extent of the HumKo damages as a just and reasonable inference, and the Teamsters Unions are not entitled to complain that they are not measured with exactness and precision that would be possible if the case, which the Teamsters Unions above are responsible for making, were otherwise. The speculation here is really on the other foot for the Teamsters Unions speculated they would get by with their secondary boycott and they not successful.

With the declaration by the Appellate Courts and the Supreme Court that the constant tendency of the courts is to find some way in which damages can be awarded when a wrong has been done, we submit the risk of uncertainty of damages, if any, must be thrown on the appellant Teamsters Unions as conscious wrongdoers. Certainly the courts do not invite depredation by these Teamsters Unions without relief to HumKo as an injured party.

IV.

TEAMSTERS UNIONS BRIEF

A. Teamsters Claimed Conflict in Opinions.

This contention falls short. The Teamsters cite three Appeals cases, without argument, for their contention. They are not in conflict with the instant case. These cases have been considered by plaintiff HumKo, by the District Court and by the Court of Appeals, Sixth Circuit, and in the language of the Court of Appeals, Sixth Circuit, in this case "we take no issue with appellants' (petitioners') citations, and would readily apply them if we had under consideration a factual situation which fitted into the mold of the citations."

Teamsters cite NLRB vs. General Drivers (Otis-Massey case) 225 F. 2d 205, CA-5, and quote therefrom (brief p. 16) for the proposition that peaceful picketing at common premises directed solely against the primary employer is lawful. We do not disagree.

This same Court considered and dealt with Teamsters Unions tactics in NLRB v. Truck Drivers, etc., 228 F. 2d 791, CA-5, and held in accord with the Sixth Circuit in this case:

"As to the first contention with respect to peaceful

> picketing, it is sufficient to say that the Supreme Court has held that peaceful picketing is not exempted from the condemnation of Section 8(b)(4) where an objective, although not necessarily the only objective, was to induce or encourage concerted action by the employees of a secondary employer. *International Brotherhood of Electrical Workers v. Labor Board*, 341 U.S. 694. Under the authority of this case, it must therefore be held that respondents have violated the Act if the Board correctly inferred that the picketing had as one of its objectives a purpose which is prohibited by Section 8(b)(4) (A) and (B) of the Act." id. p. 793.

Teamsters cite Local 618 Automotive, etc. Union v. NLRB 249 F. 2d 332-(CA-8) as being in conflict with the Sixth Circuit here. There is no conflict. There the Union had been on strike for some months, and picketed one station and continued the picketing during remodeling. The Court found the picketing was the same prior to and after the construction work started. However, this Court of Appeals observed that if the picketing being considered was not for a legitimate purpose in connection with the primary strike it would be unlawful.

The District Court and the Court of Appeals in the instant case have concurrently found, from undisputed testimony of the Teamsters pickets at Champaign, that the Teamsters intent and purpose was to reach the construction workers of the independent contractors and shut down the construction; and as to HumKo employees "Just let them alone", and "Let them go in (the premises) because we are not interested in them." (R. pp. 171, 174, 175).

The Teamsters cite Seafarers Union v. NLRB (Salt Dome case) 265 F. 2d 58, CA-DC, as being in conflict with the Court of Appeals opinion in the case at bar. There is no conflict.

In the Salt Dome case the Union had a dispute with a ship owner, Salt Dome Construction Company, and the Court found the Union picketed the Salt Dome ship while it was at the Todd yard "in the normal business of its lessee operator" Salt Dome Construction Company, and "all the evidence negatives an objective on the part of the Seafarers Union to force or require Todd to do anything." We agree with the Court of Appeals reasoning in this Seafarers Union case:

> "The question is the objective. In the case at bar if the objective of the strike encompassed Salt Dome (Consctruction Co.) only, it was legal. If its objective was partly Todd or its employees it was illegal . . .
>
> "Did the Union intend to place a boycott on Salt Dome alone, with only an incdental economic effect on Todd and Gulf, or did it intend to place a boycott on Todd and Gulf along with Salt Dome?
>
> "In the absence of admissions by the Union of an illegal intent the nature of acts performed shows the intent."

The Teamsters in this HumKo case have admitted to their pickets, nay, have declared to their pickets, that the strike in Champaign, the picket line implementing this strike, was only to reach the contractor and sub-contractors and their employees; and the Teamsters were not interested in reaching any HumKo employees at Champaign and advised they were not interested in them.

Labor Board cases are cited by the Teamsters on a claim of conflict with the Sixth Circuit holding in the case at bar. Most of these cases were decided prior to the Supreme Court decisions June 4, 1951 beginning with NLRB v. Denver Building Trades, etc., 341 U.S. 675 et seq; and in this group of Supreme Court decisions these

Labor Board decisions were cited and relied on by the Union and rejected.

These cases are cited, considered, and analyzed in *United Brick & Clay Workers vs. Deena Artware* 198 F. 2d 637, CA-6, cert. denied 344 U.S. 897, rehear. den. 344 U.S. 919.

These cases were cited by the Teamsters on appeal in this case and were re-analyzed in this HumKo case by the Sixth Circuit, and no issue taken with them. On the factual situation of HumKo, here the Teamsters have asserted to their pickets and have not disputed that their interest, their object, their purpose in placing pickets at the construction site of the HumKo plant in Champaign, Illinois, was only to reach the general contractor, the sub-contractors, and the employees of these employers and shut down the construction, and they were not interested in HumKo employees.

B. Free Speech.

The right of Teamsters Unions to violate the proscription against secondary boycotts is asserted on the basis of the First Amendment to the United States Constitution. This contention has been considered and rejected, and the law settled in I.B.E.W. v. NLRB 341 U.S. 694.

C. The Picketing Issue.

There is no conflict of law nor in decisions applying the law.

The Teamsters Unions stress the importance of the "Picketing Issue" as a consideration for granting certiorari but cite no authority of statute or case, nor any conflicts.

The Picketing Issue is important, for by undisputed testimony of the Teamsters Unions pickets this picketing was to reach neutral employees and their employers, for an object and purpose proscribed by the law of the land —set forth by clear statute terms, and by this Court decisions in equally clear terms.

D. Damage Issues.

This point presents no ground for granting certiorari. There is no conflict of decisions. The law is remedial, and is clear and precise, 29 U.S.C., Sec. 187(b): "Whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue . . . and shall recover the damages by him sustained and the cost of the suit."

The facts on this point are fully developed in our Statement of Facts, and in our argument on this point, supra.

See: *United Brick etc. Workers v. Deena* 198 F. 2d 637, CA-6, cert. den. 344 U.S. 897, rehear. den. 344 U.S. 919.

Longshoremen v. Juneau Spruce 189 F. 2d 177, aff. 342 U.S. 237.

CONCLUSION

Respondents submit that no writs of certiorari should be granted, and the petition herein should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June ...., 1961, I served a copy of the attached brief upon L. N. D. Wells, Jr., and Charles J. Morris, 1610 National Bankers Life Building, Dallas 1, Texas, and Anthony J. Sabella, 81 Madison Building, Memphis 3, Tennessee, Attorneys for Petitioners, by depositing a copy in the United States mail, post paid, and addressed to each at the above respective addresses, and copies likewise mailed to Donald M. Reno, Fleetwood Building, Champaign, Illinois, Attorney for Kuhne-Simmons Co., Inc., and John M. Heiskell, Commerce Title Building, Memphis 3, Tennessee, Attorney for Ralph Kent Philippy, et al.

Attorney for Respondent,
The Humko Company, Inc.